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Portland, OR 97205  
Telephone: 503.224.3380  
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Attorneys for Defendant Kaiser Foundation  
Health Plan of the Northwest

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

EMILY CASTELLANOS,

Case No.: 6:22-CV-00149

Plaintiff,

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. §§ 1331,  
1441, and 1446**

v.

KAISER FOUNDATION HEALTH PLAN  
OF THE NORTHWEST; SERVICE  
EMPLOYEES INTERNATIONAL UNION  
LOCAL 49,

Defendants.

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**TO: THE CLERK OF THE ABOVE-ENTITLED COURT**

**AND TO: PLAINTIFF EMILY CASTELLANOS**

**AND TO: SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 49**

**PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. § 1441, Defendant Kaiser Foundation Health Plan of the Northwest (“Kaiser”) hereby removes to this Court the state court action described below.

1. On October 14, 2021, an action was commenced against Kaiser in the Circuit Court of the State of Oregon in the County of Marion, entitled *Emily Castellanos v. Kaiser Foundation Hospitals*, No. 21CV40666 (“State Action”). Plaintiff filed her First Amended Complaint against Kaiser on December 6, 2021, adding Service Employees International Union Local 49 (“SEIU”) as a Defendant. Attached as Exhibit 1 are copies of the First Amended Complaint and the Complaint.

2. On December 28, 2021, Kaiser was served with a copy of the Summons and First Amended Complaint. Attached as Exhibit 2 are copies of the Proofs of Service, Summonses, and the Acceptance of Service.

3. Exhibits 1 and 2 constitute all of the process, pleadings and orders in the State Action to date.

4. This Removal Notice is filed timely within 30 days after service of process under 28 U.S.C. § 1446(b).

5. Kaiser did not answer or otherwise respond to the Complaint or the First Amended Complaint prior to filing this Notice of Removal and the associated paperwork. Kaiser will file its Answer in this court upon Removal.

6. The First Amended Complaint makes allegations that require interpretation of a Collective Bargaining agreement between Kaiser and Defendant Service Employees International Union.

7. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be properly removed to this Court pursuant to 28 U.S.C. § 1441(a) because Plaintiff's First Amended Complaint asserts claims that are preempted by § 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a).

8. Removal to the United States District Court for the District of Oregon, Eugene Division, is proper because it is the judicial district embracing the place where this action is pending. *See* 28 U.S.C. § 1441(a); Local Rule 3-2(a).

9. Upon filing this Notice of Removal, Kaiser shall give written notice to Marcus Vejar and Amanda Reilly, attorneys for Plaintiff. Defendant SEIU has not yet appeared in this case. Kaiser shall also file a copy of the Notice of Removal with the Clerk of the Circuit Court of the State of Oregon for the County of Marion, as required by 28 U.S.C. § 1446(d).

10. By filing this Notice of Removal, Kaiser does not waive, and expressly reserves, any defenses that may be available.

WHEREFORE, Kaiser removes the above-captioned action now pending against it in the Circuit Court of the State of Oregon for the County of Marion to the U.S. District Court for the District of Oregon, Eugene Division, where it shall proceed as an action originally commenced there.

DATED: January 27, 2022.

STOEL RIVES LLP

/s/ Laura E. Rosenbaum  
LAURA E. ROSENBAUM, OSB No. 110061  
laura.rosenbaum@stoel.com  
NOAH H. MORSS, OSB No. 172845  
noah.morss@stoel.com  
Telephone: 503.224.3380

Attorneys for Defendant Kaiser

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1331, 1441, and 1446** on the following named person(s) on the date indicated below by

- ☒ mailing with postage prepaid
- ☐ hand delivery
- ☐ facsimile transmission
- ☐ overnight delivery
- ☒ email
- ☒ notice of electronic filing using the Cm/ECF system

to said person(s) a true copy thereof, and if by mail, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

Marcus I. Vejar  
Amanda L. Reilly  
Lafky & Lafky  
429 Court St. NE  
Salem, OR 97301  
mvejar@lafky.com  
areilly@lafky.com

DATED: January 27, 2022.

STOEL RIVES LLP

/s/ Laura E. Rosenbaum  
LAURA E. ROSENBAUM, OSB No. 110061  
laura.rosenbaum@stoel.com  
NOAH H. MORSS, OSB No. 172845  
noah.morss@stoel.com

Attorneys for Defendant

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF MARION

EMILY CASTELLANOS,

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS,

Defendant.

) Case No. 21CV40666

) COMPLAINT- WHISTLEBLOWER  
) DISCRIMINATION (ORS 659A.199);  
) WRONGFUL TERMINATION; NURSE  
) STAFFING LAWS (441.181); BREACH OF  
) CONTRACT

) (Jury Trial Requested; Not Subject to  
) Mandatory Arbitration)

) (Prayer for Relief: \$500,000)

Emily Castellanos ("Plaintiff") alleges:

**JURISDICTION AND VENUE**

1.

Plaintiff is a resident of Marion County, Oregon. Defendant Kaiser Foundation Hospitals ("Defendant"), is national organization with offices and hospitals throughout the country, including in Marion County Oregon. The North Lancaster Urgent Care operated by Defendant located in Marion County, Oregon was the physical place of employment for Plaintiff.

2.

Venue and jurisdiction are proper in this Court because Defendant is a business entity which owns and operates locations within Marion County Oregon.

3.

The events giving rise to this complaint occurred primarily in Marion County, Oregon.

**COMPLAINT - 1**

1 4.

2 Defendant is an “employer” as defined in ORS Chapter 659A.106, and employs more  
3 than six (6) employees.

4 5.

5 Plaintiff requests a jury trial in this matter.

6 **FACTUAL ALLEGATIONS**

7 6.

8 Plaintiff was employed by Defendant and worked there for approximately 4 years, holding  
9 the title of Licensed Practical Nurse at the time of termination. Plaintiff worked in Primary Care for  
10 Defendant for roughly 2 years before being transferred to Urgent Care. Plaintiff was primarily  
11 working from the North Lancaster location prior to her termination on October 17<sup>th</sup>, 2020. Plaintiff  
12 worked part-time, 20 hours per week for Defendant and chose to continue with this schedule, despite  
13 being offered a full-time position with Defendant. Plaintiff had been described as a hardworking  
14 nurse that is determined to give her best care to her patients. There was no history of corrective  
15 action, ethical problems, or concerns regarding her standard of care prior to her termination.

16 7.

17 Approximately 1-2 months prior to September 19<sup>th</sup>, 2020, Plaintiff was approached by her  
18 supervisor and was informed that Defendant was struggling financially and employees working  
19 under 40 coded hours were offered to move full-time. At the time, Plaintiff was then informed by  
20 her supervisor that she was looking out for the employees because she heard that it was “coming  
21 down the pipeline that they are wanting to get rid of part-time employees in our department.” Despite  
22 having this information, Plaintiff declined the offer as she was a full-time RN student.

23 8.

24 On September 19<sup>th</sup>, 2020, Plaintiff was informed that employee Tirzah Lanoie would be  
25 acting as supervisor for Saturdays as Aimee Orr-Besa, who is the typical department supervisor, is  
26 out of the office on Saturdays. Ms. Lanoie then had let staff know that they could come to her with  
27 any concerns or questions. Upon asking how the day looked, Ms. Lanoie was informed that they  
28

1 were very short staffed and she responded that they had two Medical Assistants working in primary  
2 care who could potentially help out. Ms. Lanoie had then stated that both employees could help with  
3 rooming patients, immunizations, and COVID tests. Ms. Lanoie noted that these employees were  
4 both trained and checked off by her for COVID testing. Not long after, Plaintiff had left the area to  
5 work on her morning tasks.

6 9.

7 Around 1pm on September 19<sup>th</sup>, 2020, Ms. Lanoie came to Plaintiff's department to inform  
8 them that the two Medical Assistants were willing to stay and help out. Ms. Lanoie, along with  
9 another employee, began to help the Medical Assistants in their preparations. The Medical Assistants  
10 were shown the testing room for the COVID tests and the swabs. Plaintiff informed her coworkers  
11 that since they have the help, Plaintiff would get on top of the nursing tasks that the Medical  
12 Assistants were unable to cover. Prior to this, Plaintiff was preparing the COVID swabs and then  
13 moved to more time sensitive concerns that had to take priority. Plaintiff had agreed with her  
14 coworker, Staci Hoover, that the Medical Assistants could do the COVID swabs to best utilize the  
15 Medical Assistants and allow for Plaintiff to focus on nursing tasks. Plaintiff did not delegate these  
16 tasks to the Medical Assistants and assisted them in preparations only after the Medical Assistants  
17 had volunteered and were approved by management. Plaintiff then left to work on nursing tasks and  
18 reminded her other coworkers about the restrictions on the tests Licensed Practical Nurses and  
19 Medical Assistants could administer.

20 10.

21 Around 6:15 on September 19<sup>th</sup>, 2020, after the last patient was discharged, Lenae Trussell,  
22 Plaintiff's shift lead, sat down with Plaintiff and Ms. Hoover to let them know she was disappointed  
23 in the decision to allow Medical Assistants to administer the COVID tests. This was contradictory  
24 to the protocol that had been given to Plaintiff regarding who could administer the tests. Plaintiff  
25 informed Ms. Trussell that they were following protocol and that Ms. Lanoie had stated expressly  
26 that the Medical Assistants assisting were trained and checked off by her directly. Plaintiff then  
27 apologized that she upset Ms. Trussell and that they were overwhelmed and did the best they could  
28

1 with the resources given. As Plaintiff was not usually working on Saturdays, she was simply going  
2 off protocol and what Ms. Lanoie had informed them. Plaintiff did not apologize as to any  
3 recognition of wrong doing as this practice was clearly allowed by protocol, but did feel remorseful  
4 that Ms. Trussell was upset over the situation. Despite this lecture from Ms. Trussell, she had  
5 notified staff via a note that she was impressed at the hard-work displayed by staff throughout the  
6 busy day.

7 11.

8 The following day, on September 20<sup>th</sup>, 2020, Ms. Orr-Besa had went to check-in with the  
9 team. At that time, Plaintiff informed Ms. Orr-Besa that the previous day had terrible staffing issues  
10 and that the day was a nightmare, with Plaintiff feeling as though she was drowning in work.  
11 Plaintiff noted she had too many nursing tasks to do in a safe and efficient manner and there could  
12 have been medical errors made due to the complete lack of support. Plaintiff shared that Ms. Trussell  
13 did not support the staff when this happened and Plaintiff had an excessively difficult time coping  
14 with the impossible workload. Plaintiff had approached Ms. Trussell while she was overwhelmed  
15 and Plaintiff was told that this was the job and her complaints concerning staffing were dismissed.  
16 This situation was made worse by Ms. Trussell's decision to scold and lecture Plaintiff and Ms.  
17 Hoover after the shift. A week after the incident, Plaintiff had met with Ms. Orr-Besa in her office  
18 to discuss the staffing issues further and discussed calling the compliance hotline provided to  
19 employees for issues. In addition to these complaints, Plaintiff stressed that, due to the staffing  
20 issues, it may not be possible to treat certain conditions at any given time in Urgent Care, which  
21 could lead to potential complications, including death of a patient. Plaintiff was instructed not to  
22 contact this number and was later questioned about the compliance hotline as Plaintiff had informed  
23 another employee that she could use the hotline if the employee was concerned about reporting  
24 issues to management.

25 12.

26 On October 4<sup>th</sup>, 2020, Plaintiff was informed that she would need to participate in a discovery  
27 meeting with her employer to discuss the events of September 19<sup>th</sup>, 2020. Plaintiff was given no  
28



1 basic information as to what the meeting would be concerning outside of addressing potential fraud,  
2 waste, and abuse of position and it was not clear that Plaintiff was to be disciplined at this meeting.  
3 Plaintiff is aware that employees may participate in discovery meetings that do not directly address  
4 their conduct. Furthermore, Defendant made no assertion to Plaintiff that she was unable to  
5 communicate with fellow employees about the meeting. That night, Plaintiff had spoken with Ms.  
6 Hoover regarding the meeting, simply to inquire if she had a meeting scheduled as well. This  
7 conversation was fairly brief as both Plaintiff and Ms. Hoover were unaware of what the meeting  
8 was for. Plaintiff later learned that Defendant had taken Ms. Hoover's statement on September 29<sup>th</sup>,  
9 2020, prior to Plaintiff's communication with Ms. Hoover and prior to Plaintiff's knowledge of the  
10 discovery meeting.

11 13.

12 The discovery meeting took place October 17<sup>th</sup>, 2020 and this was to discipline Plaintiff for  
13 her conduct on September 19<sup>th</sup>, 2020, despite the fact that she was acting according to protocol, had  
14 express permission from the acting supervisor that ratified her conduct, and no other employees were  
15 disciplined or reprimanded. In complete disregard to Defendant's discharge of Plaintiff, Defendant  
16 allegedly still used Medical Assistants to administer COVID testing. At the conclusion of this  
17 meeting, Plaintiff was terminated and began the grievance process with her union to address the  
18 termination. This grievance process resulted in Plaintiff's termination being upheld. Plaintiff  
19 vehemently disputes this termination and the union's conduct in addressing her grievances. At the  
20 time of termination, Plaintiff was covered under a Collective Bargaining Agreement between Kaiser  
21 Foundation Hospitals and the Service Employees International Union Local 49.

22 14.

23 As a result of his termination, Plaintiff has now sustained approximately \$150,000 in  
24 economic damages including lost wages, benefits of employment, and continuing therapy costs  
25 associated with this incident to be proven with more particularity at trial with an additional \$350,00  
26 in non-economic damages. Furthermore, Plaintiff requests continuing lost wages and benefits as  
27 compensation for her wrongful termination.  
28

**FIRST CLAIM FOR RELIEF AGAINST DEFENDANT-STATE STATUTORY  
WHISTLEBLOWER DISCRIMINATION**

15.

Plaintiff realleges paragraphs 1-14 above. According to ORS 659.199(1), "It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation."

16.

As described in detail above, Plaintiff had made an official complaint to her manager regarding issues of nurse staffing on two separate occasions, stressing the difficulty of the job with the staffing issues and impacts it has on staff. This report is protected under ORS 441.181 which states that a hospital may not take retaliatory action against nursing staff because the nursing staff, "Discloses or intends to disclose to a manager, a private accreditation organization or a public body an activity, policy or practice of the hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public." Plaintiff had expressed her concerns about staff and the impact it would have on their ability to exercise proper care for the patients.

17.

Plaintiff did not receive notice of the proposed discipline for two weeks after the incident had taken place and Plaintiff was the only person disciplined terminated for this incident. This was after Plaintiff had made complaints to management on two separate occasions and had informed another employee of their right to use the compliance hotline provided to staff, which Plaintiff was discouraged from utilizing.

18.

**COMPLAINT - 6**

1 As a result of Defendant's violation of ORS 659A.199(1), Plaintiff requests equitable relief,  
 2 economic damages as set forth in paragraph 14, along with reasonable costs and attorney fees  
 3 pursuant to ORS 659A.885.

4 **SECOND CLAIM FOR RELIEF AGAINST DEFENDANT—WRONGFUL**  
 5 **TERMINATION**

6 19.

7 Plaintiff realleges paragraphs 1-18 above. Defendant terminated Plaintiff because she  
 8 exercised a legal right to make a report to management concerning the potential violations, the  
 9 impacts the staffing was having on the care of patients, and the difficulty staff was having in properly  
 10 completing their job duties. According to Section 49.0 of the Collective Bargaining Agreement  
 11 Plaintiff was covered by, no employee is to be disciplined or discharged without just cause. No other  
 12 employee faced similar discipline or discharge as Plaintiff for this conduct and Defendant bypassed  
 13 its progressive discipline process. The stated reasons Defendant gave in the notice of termination  
 14 completely disregards the protocol given to staff regarding the Medical Assistants Guidance  
 15 provided. The foundation Defendant based its termination on is not supported by the actual events  
 16 of September 19<sup>th</sup>, 2020 and the Defendant's failure to engage in progressive discipline demonstrates  
 17 its ulterior motives for terminating Plaintiff.

18 22.

19 As a result of Defendant's wrongful termination of Plaintiff due to the complaints made  
 20 protected by law and in violation of ORS 441.181, Plaintiff requests remedies consistent with her  
 21 requests in paragraph 14 of this complaint.

22 **THIRD CLAIM FOR RELIEF AGAINST DEFENDANT—NURSE STAFFING LAWS**  
 23 **(441.181)**

24 23.

25 Plaintiff realleges paragraphs 1-22 above. Pursuant to ORS 441.181, a hospital may not take  
 26 retaliatory action against a nursing staff because the nursing staff discloses or intends to disclose to  
 27 a manager, a private accreditation organization or a public body an activity, policy or practice of the  
 28 hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or

1 is a violation of professional standards of practice that the nursing staff reasonably believes poses  
2 a risk to the health, safety or welfare of a patient or the public.

3 24.

4 Pursuant to ORS 441.183, a nursing staff aggrieved by an act prohibited by ORS 441.181  
5 may bring an action in circuit court of the county in which the hospital is located. All remedies  
6 available in a common law tort action are available to a nursing staff if the nursing staff prevails in  
7 an action brought under this subsection and are in addition to any remedies provided in subsection  
8 (2) of this section. This would include the following remedies which Plaintiff is pursuing:

9 (1) Reinstatement the nursing staff to the same or equivalent position that the nursing staff  
10 held before the retaliatory action;

11 (2) Reinstatement full benefits and seniority rights to the nursing staff as if the nursing staff  
12 had continued in employment;

13 (3) Compensate the nursing staff for lost wages, benefits and other remuneration,  
14 including interest, as if the nursing staff had continued in employment;

15 (4) Order the hospital to pay reasonable litigation costs of the nursing staff, including  
16 reasonable expert witness fees and reasonable attorney fees; and

17 (5) Award punitive damages as provided in ORS 31.730

18 25.

19 As explained above, Plaintiff made complaints to management on two separate occasions  
20 regarding staffing issues and the potential impacts it was having on patient care. Not long after these  
21 protected complaints were made, Plaintiff was subjected to termination without progressive  
22 discipline and without just cause. For these reasons, Plaintiff requests relief consistent with  
23 paragraph 14 and 24 of this complaint for the violations under ORS 441.181, including reasonable  
24 attorney fees, provided under ORS 441.183(2)(e).

25 **FOURTH CLAIM FOR RELIEF AGAINST DEFENDANT—BREACH OF CONTRACT**

26 26.

27 Plaintiff realleges paragraphs 1-25 above. As stated above, Plaintiff was covered by a  
28

Collective Bargaining Agreement as a represented employee. As part of this agreement, Section 49.1, no employee is to be disciplined or discharged without just cause. As Plaintiff was terminated without just cause, Defendant knowingly breached the contract that covered Plaintiff's employment.

27.

As Defendant knowingly breached the agreement between itself and Plaintiff, Plaintiff is requesting to be made whole as though the contract was properly enforced between Plaintiff and Defendant. For this reason, Plaintiff is requesting reinstatement, along with her lost wages and benefits, as are guaranteed by the Collective Bargaining Agreement covering Plaintiff's employment.

WHEREFORE, Plaintiff demands the following for his claims for relief:

1. Economic damages in an amount to be proven at trial, which sum is alleged to be \$150,000, along with continuing lost wages and benefits and \$350,00 in non-economic damages.
2. Expert witness fees, interest, costs and reasonable attorney fees pursuant to ORS 659A.885;
4. Equitable relief in the form of reinstatement;
5. Reasonable litigation costs of Plaintiff, including reasonable expert witness fees and reasonable attorney fees pursuant to ORS 441.183.
6. Such other relief as this Court may Order.

DATED this 14th day of October, 2021.

/s/ Marcus I. Vejar

Marcus I. Vejar, OSB#194708  
Amanda L. Reilly, OSB#194422  
Of Attorneys for Plaintiff

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF MARION

EMILY CASTELLANOS,  
Plaintiff,

Case No. 21CV40666

ACCEPTANCE OF SERVICE

v.

KAISER FOUNDATION HEALTH  
PLAN OF THE NORTHWEST;  
SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL  
49,

Defendants.

I, Laura Rosenbaum, hereby accept service of a true copy of the Complaint heretofore  
filed in the above-entitled matter, along with the summons, on behalf of the defendant, KAISER  
FOUNDATION HEALTH PLAN OF THE NORTHWEST. I hereby attest that I am duly  
authorized by my client to accept this service.

DATED this 28th day of December 2021.



Laura E Rosenbaum OSB#110061

[lrosenbaum@stoel.com](mailto:lrosenbaum@stoel.com)

Stoel Rives LLP

760 SW Ninth Ave Ste 3000

Portland OR 97205

Attorney for Defendant Kaiser Foundation  
Health Plan of the Northwest

**AFFIDAVIT OF SERVICE**

**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF MARION**

Case Number: 21CV40666

Plaintiff: **EMILY CASTELLANOS**

vs.

Defendant: **KAISER FOUNDATION HEALTH  
PLAN OF THE NORTHWEST; SERVICE  
EMPLOYEES INTERNATIONAL UNION  
LOCAL 49,**

Service Documents:

Summons and First Amended Complaint

For:

Lafky & Lafky  
429 Court Street N.E.  
Salem, OR 97301

Received by MALSTROM'S PROCESS SERVING CO. on the 28th day of December, 2021 at 3:09 pm to be served on **SEIU LOCAL 49, 3536 SE 26TH AVE, PORTLAND, OR 97202.**

I, Wayne Savage, Process Server, being duly sworn, depose and say that on the **4th day of January, 2022** at **9:44 am, I:**

SERVED **SEIU LOCAL 49** at 3536 SE 26TH AVE, PORTLAND, OR 97202 by personally serving a true copy of the Summons and First Amended Complaint upon NATALIE MCALLISTER, the clerk on duty in the office of the Registered Agent and who is authorized to accept service.

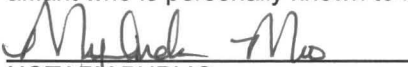
MAILING was completed on 1/11/2022 by mailing a true copy of the documents served to the defendant at the address of service along with a statement regarding the date, time and manner of service.

**Description** of Person Served: Age: 34, Sex: F, Race/Skin Color: CAUCASIAN, Height: 5'5", Weight: 160, Hair: RED, Glasses: Y

I declare under penalty of perjury that I am a resident of the State of Oregon. I am a competent person 18 years of age or older and not a party to or attorney in this proceeding and am authorized to serve the process described herein. I certify that the person, firm, or corporation served is the identical one named in this action. I am not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that it is made for use as evidence in court and is subject to penalty for perjury.

Subscribed and Sworn to before me on the 11th day of January, 2022 in the county of Multnomah by the affiant who is personally known to me.

  
NOTARY PUBLIC  
of OREGON

  
Wayne Savage, Process Server

Process Server

1/11/2022  
Date

**MALSTROM'S PROCESS SERVING CO.  
155 CULVER LANE S  
Salem, OR 97302  
(503) 585-0234**

Our Job Serial Number: ONE-2021004642  
Ref: CASTELLANOS

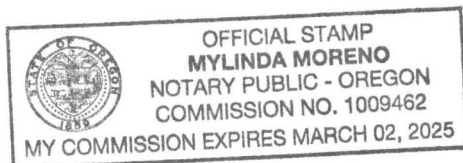


EXHIBIT 2

Page 2 of 2





IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF MARION

EMILY CASTELLANOS,

Case No. 21CV40666

Plaintiff,

SUMMONS

v.

KAISER FOUNDATION HEALTH  
PLAN OF THE NORTHWEST;  
SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL  
49,

Defendants.

TO: SEIU Local 49, 3536 SE 26th Ave, Portland, OR 97202.

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and defend the complaint filed against you in the above-entitled cause within 30 days from the date of service of this summons on you; and if you fail to appear and defend, the plaintiff will apply to the court for the relief demanded in the complaint.

**NOTICE TO DEFENDANT:  
READ THESE PAPERS CAREFULLY!**

**You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.**

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

/s/ Kevin T. Lafky

Kevin T. Lafky, OSB#852633

klafky@lafky.com

LAFKY & LAFKY

429 Court Street NE

Salem, OR 97301

Ph: 503-585-2450

Attorneys for Plaintiff



1 STATE OF OREGON                     )  
2   ) ss.  
3 County of Marion                     )

4 I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact  
5 and complete copy of the original summons in the above entitled action.

6 /s/ Kevin T. Lafky  
7 Kevin T. Lafky, OSB#852633  
8 klafky@lafky.com  
9 LAFKY & LAFKY  
429 Court Street NE  
Salem, OR 97301  
Ph: 503-585-2450  
Attorneys for Plaintiff

10  
11 **TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS:** You are  
12 hereby directed to serve a true copy of this summons, together with a true copy of the complaint  
13 mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this  
14 summons is directed, and to make your proof of service on the reverse hereof or upon a separate  
15 similar document which you shall attach hereto.

16 /s/ Kevin T. Lafky  
17 Kevin T. Lafky, OSB#852633  
18 klafky@lafky.com  
19 LAFKY & LAFKY  
429 Court Street NE  
Salem, OR 97301  
Ph: 503-585-2450  
Attorneys for Plaintiff

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF MARION

EMILY CASTELLANOS,

Case No. 21CV40666

Plaintiff,

SUMMONS

v.

KAISER FOUNDATION HEALTH  
PLAN OF THE NORTHWEST;  
SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL  
49,

Defendants.

TO: SEIU Local 49, 3536 SE 26th Ave, Portland, OR 97202.

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If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

/s/ Kevin T. Lafky

Kevin T. Lafky, OSB#852633

klafky@lafky.com

LAFKY & LAFKY

429 Court Street NE

Salem, OR 97301

Ph: 503-585-2450

Attorneys for Plaintiff

1 STATE OF OREGON                     )  
2   ) ss.  
3 County of Marion                     )

4 I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact  
5 and complete copy of the original summons in the above entitled action.

6 /s/ Kevin T. Lafky  
7 Kevin T. Lafky, OSB#852633  
8 klafky@lafky.com  
9 LAFKY & LAFKY  
429 Court Street NE  
Salem, OR 97301  
Ph: 503-585-2450  
Attorneys for Plaintiff

10 **TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS:** You are  
11 hereby directed to serve a true copy of this summons, together with a true copy of the complaint  
12 mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this  
13 summons is directed, and to make your proof of service on the reverse hereof or upon a separate  
14 similar document which you shall attach hereto.

15 /s/ Kevin T. Lafky  
16 Kevin T. Lafky, OSB#852633  
17 klafky@lafky.com  
18 LAFKY & LAFKY  
429 Court Street NE  
Salem, OR 97301  
Ph: 503-585-2450  
Attorneys for Plaintiff

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF MARION

**EMILY CASTELLANOS,**

Plaintiff,

v.

**KAISER FOUNDATION HEALTH  
PLAN OF THE NORTHWEST;  
SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL  
49,**

Defendants.

Case No. 21CV40666

**FIRST AMENDED COMPLAINT -  
WHISTLEBLOWER RETALIATION  
(ORS 659A.199 and ORS 659A.203);  
NURSING STAFF RETALIATION (ORS  
441.183); BREACH OF CONTRACT;  
WRONGFUL TERMINATION;  
BREACH OF DUTY OF FAIR  
REPRESENTATION**

Claim Not Subject to Mandatory Arbitration

Jury Trial Requested

Claim for Money Damages: \$592,000

Emily Castellanos ("Plaintiff") alleges, at all time material herein:

**VENUE AND JURISDICTION**

1.

Plaintiff is a resident of Marion County, Oregon.

2.

Defendant Kaiser Foundation Health Plan of the Northwest ("Kaiser") is an Oregon Domestic Nonprofit Corporation with its principal place of business in Oakland, California. Kaiser operates the North Lancaster Medical Office, located in Marion County, Oregon.

3.

Defendant Service Employees International Union Local 49 ("SEIU") is a labor union with its principal place of business in Portland, Oregon. SEIU is the exclusive certified

1 bargaining representative for employees working at Kasier facilities located in Marion County,  
2 Oregon, including the North Lancaster Medical Office.

3 4.

4 Venue and jurisdiction are appropriate in this Court because the events giving rise to  
5 this complaint occurred primarily in Marion County, Oregon and because Kaiser has a  
6 registered agent authorized to receive process in Marion County, Oregon.

7 5.

8 Plaintiff requests a jury trial.

9 **FACTUAL ALLEGATIONS**

10 6.

11 In 2016, Plaintiff began working for Kaiser as a part-time Licensed Practical Nurse  
12 (“LPN”). In 2018, Plaintiff was transferred to the Urgent Center at the North Lancaster  
13 Medical Office. Prior to her termination on October 17, 2020, Plaintiff did not have any  
14 corrective or disciplinary actions.

15 7.

16 SEIU and Kaiser have a Collective Bargaining Agreement (“CBA”), effective October  
17 1, 2019 through September 30, 2023, that is the sole and complete agreement between the  
18 parties.

19 8.

20 Section 49.1 of the CBA provides “[n]o employee shall be disciplined or discharged  
21 without just cause.” Section 49.1 of the CBA further provides “[i]t is the Employer’s intent  
22 normally to make use of progressive discipline in accordance with established practices and  
23 policy.”

24 9.

25 Plaintiff was a dues-paying member of SEIU and a third-party beneficiary of the CBA

26 /////

1 10.

2 On or about August 2020, Plaintiff's supervisor asked Plaintiff to transition from part-  
3 time to full-time employment status. Plaintiff explained that she could not do so because she  
4 was still a full-time student pursuing her nursing license. Plaintiff's supervisor warned her that  
5 Kaiser would look for reasons to "get rid of" part-time employees who declined the offer.

6 11.

7 On or about September 19, 2020, Tirzah Lanoie, Plaintiff's acting supervisor at the  
8 time, notified Plaintiff that the North Lancaster Medical Office was very short staffed. Lanoie  
9 instructed Plaintiff and other LPNs, including Staci Hoover, to rely on the two medical  
10 assistants ("MAs") in the office to help room patients, administer immunizations, and  
11 administer COVID-19 tests. Lanoie specifically noted that both MAs were trained and  
12 approved to administer COVID-19 tests.

13 12.

14 Later that day, the MAs approached Plaintiff and Hoover to offer assistance with  
15 administering COVID-19 tests. Based on Lanoie's previous statements and actions, Plaintiff  
16 and Hoover agreed that the MAs could administer COVID-19 tests.

17 13.

18 At the end of her shift, Plaintiff informed Lenae Trussell, her shift lead, that the  
19 staffing issues at the North Lancaster Medical Office was jeopardizing staff and patient safety.

20 14.

21 The following day, on or about September 20, 2020, Plaintiff informed Aimee  
22 Orr-Besa, the department supervisor, that she and other LPNs had been assigned too many  
23 nursing tasks. Plaintiff expressed her concerns that she could not perform the nursing tasks in  
24 a safe and efficient manner and that she was worried about patient safety.

25 15.

26 The following week, on or about October 1, 2020, Plaintiff met with Orr-Besa again to

1 discuss her concerns with the staffing issues at the North Lancaster Medical Office. Plaintiff  
2 stressed that she did not believe the Urgent Care Center could continue to treat certain  
3 conditions due to the low staffing and expressed genuine fears that doing so would place  
4 patients at risk and could even result in the death of a patient.

5 16.

6 Plaintiff told Orr-Besa that she was going to call a compliance hotline to discuss and  
7 disclose her concerns regarding the staffing issues. Orr-Besa instructed Plaintiff not to contact  
8 the compliance hotline under any circumstances.

9 17.

10 Three days later, on or about October 4, 2020, Kaiser informed Plaintiff that it was  
11 investigating the events of September 19, 2020; specifically allegations that Plaintiff had  
12 allowed MAs to administer COVID-19 tests despite being instructed not to.

13 18.

14 Plaintiff denied, and continues to deny, the allegation that she had been specifically  
15 instructed by a supervisor to not allow MAs to administer COVID-19 tests.

16 19.

17 Kaiser claimed that Plaintiff's alleged misconduct was "intentional/ gross negligence/  
18 unsafe action/inaction. [Plaintiff] demonstrated no regard for client safety and harm almost  
19 certainly would occur . . . Willful egregious/flagrant choice, put own interest above that of the  
20 client/ agency/ public. Intentionally neglected red flags. Substantial and unjustifiable risk."

21 20.

22 Kaiser claimed Plaintiff's alleged conduct constituted fraud, waste, and abuse in  
23 violation of Kaiser Standards 1 (lacking judgment, integrity, accountability, and respect;  
24 dishonesty), 3 (showing deception and misrepresentation of the truth to benefit oneself), and 7  
25 (blatant display of behaviors that lack dignity and respect). Kaiser also claimed that Plaintiff  
26 was insubordinate and violated the Oregon Nursing Standards as "MA's do not hold the scope

1 of practice to manage Covid testing from the nurse schedule.”

2 21.

3 On or about October 17, 2020, Kaiser held a Joint Discovery meeting. Immediately  
4 following this meeting, Kaiser terminated Plaintiff’s employment.

5 22.

6 Pursuant to Kaiser policies, after the Joint Discovery meeting, Kaiser must engage in  
7 conflict resolution, including corrective action and progressive discipline. Kaiser may only  
8 discipline an employee whose behavior rises to the level of gross misconduct or gross  
9 negligence.

10 23.

11 Kaiser defines “misconduct” as “a willful violation of the standards of behavior an  
12 employer has the right to expect of an employee. An act that amounts to a willful disregard of  
13 an employer’s interests or recurring negligence demonstrating wrongful intent is misconduct.  
14 Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to  
15 illness, or mere inefficiency resulting from lack of skills or experience are not misconduct.”

16 24.

17 Kaiser defines “gross misconduct” as “an offense punishable as a felony[.]” Lesser  
18 offenses may also be gross misconduct if there is a connection between the offense and the  
19 employee’s job, the employee has the ability to understand the gravity of her conduct, the  
20 employee reasonable should have known her actions could cause harm to the employer, and  
21 the employee’s offense was affirmative and willful, not simply negligent. Kaiser’s gross  
22 misconduct policy states that “the employer has the burden of proving gross misconduct.”

23 25.

24 Kaiser claimed that Plaintiff’s alleged conduct rose to the level of “gross misconduct”  
25 because it demonstrated an absence of care in comparison to a similarly situated employee in  
26 similar circumstances, was a violation of professional practice standards, and willful



1 insubordination.

2 26.

3 Kaiser never investigated or disciplined Hoover despite the fact that Hoover was a  
4 similarly situated employee who had also authorized and instructed the two MAs to administer  
5 COVID-19 tests on patients in the same manner as Plaintiff.

6 27.

7 Neither the Washington State Nursing Care Quality Assurance Commission or the  
8 Oregon State Board of Nursing found that Plaintiff violated any professional practice  
9 standards.

10 28.

11 On or about November 18, 2020, the Washington State Nursing Care Quality  
12 Assurance Commission closed the complaint against Plaintiff without investigation because  
13 the allegation against her fell below the threshold.

14 29.

15 On or about March 18, 2021, the Oregon State Board of Nursing voted that Plaintiff's  
16 alleged misconduct did not warrant any discipline and closed the case.

17 30.

18 Additionally, Kaiser's Ambulatory COVID-19 Screening and Guidance for  
19 RN/LPN/MA provides that "[i]t is within the Medical Assistant's clinic activities to be  
20 delegated the task of COVID-19 nasal swabbing."

21 31.

22 Plaintiff's termination violated Section 49.1 of the CBA because it was not for cause  
23 and because Kaiser did not engage in progressive discipline. Additionally, Kaiser did not  
24 conduct a complete and fair investigation and did not follow its own investigation policies.

25 32.

26 Following her improper and unlawful termination by Kaiser, Plaintiff filed a grievance

1 and followed all procedures set forth in the CBA. SEIU carried out Plaintiff's grievance  
 2 through Step Three of the grievance process, but failed and refused to pursue the grievance to  
 3 arbitration.

4 33.

5 As a result of Kaiser's and SEIU's unlawful actions, Plaintiff has suffered economic  
 6 damages in an amount to be proven with particularity at trial, but which sum is alleged to be  
 7 \$80,000 in the form of lost wages and benefits, future earnings and benefits, and impairment  
 8 to earning capacity and will continue to suffer approximately \$5,500 per month in lost wages  
 9 and benefits.

10 34.

11 As a result of Kaiser's and SEIU's unlawful actions, Plaintiff has also suffered  
 12 economic damages in an amount to be proven with particularity at trial, but which sum is  
 13 alleged to be \$12,000 in the form medical and/or mental health treatment.

14 35.

15 As a result of Kaiser's and SEIU's unlawful actions, Plaintiff has suffered and  
 16 continues to suffer extreme mental and emotional distress, including damage to her  
 17 professional reputation, loss of enjoyment of life, depression, anxiety, panic attacks, fear,  
 18 worry, grief, anger, confusion, embarrassment, humiliation, and loss of sleep. Plaintiff  
 19 requests non-economic damages in an amount to be proved with particularity at trial, but  
 20 which sum is alleged to be \$500,000.

21 **FIRST CAUSE OF ACTION - VIOLATION OF ORS 659A.199**

22 **WHISTLE BLOWER RETALIATION**

23 **(Kaiser)**

24 36.

25 Plaintiff incorporates and re-alleges paragraphs 1 through 35 above.

26 /////

**Page 7 - FIRST AMENDED COMPLAINT**

37.

Pursuant to ORS 659A.199, “[i]t is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.”

38.

As described above in more detail, Plaintiff made protected complaints concerning information that she reasonably believed was evidence of a violation of state or federal law, rule, or regulation to Orr-Bessa and Trussell.

39.

Kaiser unlawfully terminated Plaintiff’s employment based, in substantial part, on those protected complaints.

40.

As a result of Kaiser’s unlawful employment practices, Plaintiff requests equitable relief in the form of reinstatement to the same or equivalent position she previously held and reinstatement of full benefits and seniority rights as if she had continued in employment. Plaintiff further requests economic and nonneconomic damages as described in paragraphs 33 through 35, and reasonable costs, expert witness and attorney fees pursuant to ORS 659A.885.

## **SECOND CAUSE OF ACTION - VIOLATION OF ORS 659A.203**

### **WHISTLE BLOWER RETALIATION**

**(Kaiser)**

41.

Plaintiff incorporates and re-alleges paragraphs 1 through 42 above.

42.

Pursuant to ORS 659A.203, it is an unlawful employment practice for an employer to

1 “[p]rohibit any employee from disclosing, or take or threaten to take disciplinary action  
 2 against an employee for the disclosure of any information that the employee reasonably  
 3 believes is evidence of [a] violation of any federal, state or local law, rule or regulation by the  
 4 public or nonprofit employer; [or] [m]ismanagement, gross waste of funds or abuse of  
 5 authority or substantial and specific danger to public health and safety resulting from action of  
 6 the public or nonprofit employer[.]”

7 43.

8 As explained above in more detail, Kaiser unlawfully prohibited Plaintiff from  
 9 disclosing information that she reasonably believed was evidence of a violation of a federal,  
 10 state, or local law, rule or regulation and mismanagement that posed a substantial danger to  
 11 public health and safety to the compliance hotline. Kaiser then unlawfully terminated  
 12 Plaintiff’s employment, in substantial part, because Plaintiff disclosed such information.

13 44.

14 As a result of Kaiser’s unlawful employment practices, Plaintiff requests equitable  
 15 relief in the form of reinstatement to the same or equivalent position she previously held and  
 16 reinstatement of full benefits and seniority rights as if she had continued in employment.  
 17 Plaintiff further requests economic and nonneconomic damages as described in paragraphs 33  
 18 through 35, and reasonable costs, expert witness and attorney fees pursuant to ORS 659A.885.

19 **THIRD CAUSE OF ACTION - VIOLATION OF ORS 441.183**

20 **NURSING STAFF RETALIATION**

21 **(Kaiser)**

22 45.

23 Plaintiff incorporates and re-alleges paragraphs 1 through 44 above.

24 46.

25 Pursuant to ORS 441.183(1)(a), a hospital may not take retaliatory action against a  
 26 nursing staff because the nursing staff discloses a policy or practice that the nursing staff

1 “reasonably believes is in violation of law or a rule or is a violation of professional standards  
2 of practice that the nursing staff reasonably believes poses a risk to the health, safety or  
3 welfare of a patient or the public” to a manager.

4 47.

5 As described above in more detail, Plaintiff made protected disclosures to Orr-Bessa  
6 and Trussell concerning staffing policies and practices at the North Lancaster Medical Office.  
7 Plaintiff reasonably believed the staffing policies and practices violated law, rule, or  
8 professional standards of practice and reasonably believed that Kaiser patients’ health, safety,  
9 and welfare were at risk.

10 48.

11 Kaiser unlawfully terminated Plaintiff’s employment based, in substantial part, on  
12 those protected disclosures.

13 49.

14 As a result of Kaiser’s unlawful practices, Plaintiff requests equitable relief in the form  
15 of reinstatement to the same or equivalent position she previously held and reinstatement of  
16 full benefits and seniority rights as if she had continued in employment. Plaintiff further  
17 requests economic and nonneconomic damages as described in paragraphs 33 through 35, and  
18 reasonable costs, expert witness and attorney fees pursuant to ORS 441.183.

19 **FOURTH CAUSE OF ACTION - BREACH OF CONTRACT**

20 **(Kaiser)**

21 50.

22 Plaintiff incorporates and re-alleges paragraphs 1 through 49 above.

23 51.

24 Section 49.1 of the CBA provides “[n]o employee shall be disciplined or discharged  
25 without just cause.” Section 49.1 further provides “[i]t is the Employer’s intent normally to  
26 make use of progressive discipline in accordance with established practices and policy.”

1 52.

2 Pursuant to Kaiser's policies, "just cause" for discipline or discharge exists only when  
3 an employee's rises to the level of gross misconduct or gross negligence.

4 53.

5 Kaiser defines "gross misconduct" as "an offense punishable as a felony[.]" Lesser  
6 offenses may also be gross misconduct if there is a connection between the offense and the  
7 employee's job, the employee has the ability to understand the gravity of her conduct, the  
8 employee reasonable should have known her actions could cause harm to the employer, and  
9 the employee's offense was affirmative and willful, not simply negligent.

10 54.

11 Kaiser's gross misconduct policy states that "the employer has the burden of proving  
12 gross misconduct."

13 55.

14 Kaiser claimed that Plaintiff's alleged misconduct rose to the level of "gross  
15 misconduct" because it demonstrated an absence of care in comparison to a similarly situated  
16 employee in similar circumstances, was a violation of professional practice standards, and was  
17 willful insubordination.

18 56.

19 The fact that Hoover authorized and instructed MAs to perform COVID-19 tests on  
20 patients in the same manner as Plaintiff demonstrates that Plaintiff did not have an absence of  
21 care in comparison to a similarly situated employee in similar circumstances. Rather, it is  
22 objective evidence that Plaintiff acted with the same level of care in comparison to a similarly  
23 situated employee in a similar circumstances.

24 57.

25 Additionally, Plaintiff did not violate any professional practice standards as supported  
26 by the Washington State Nursing Care Quality Assurance Commission and the Oregon State

1 Board of Nursing dismissal of the allegations against Plaintiff.

2 58.

3 Moreover, Kaiser's Ambulatory COVID-19 Screening and Guidance for RN/LPN/MA  
4 provides that "[i]t is within the Medical Assitant's clinic activities to be delegated the task of  
5 COVID-19 nasal swabbing."

6 59.

7 Even if Plaintiff had been insubordinate, which she disputes, insubordination is not a  
8 punishable offense, felony or otherwise. Additionally, Kaiser failed to demonstrate in any  
9 capacity how Plaintiff's alleged insubordination could have caused it harm. As such, Kaiser  
10 failed to meet its burden of proving gross misconduct.

11 60.

12 For these reasons, Kaiser did not terminate Plaintiff for "just cause." Instead, Kaiser  
13 terminated Plaintiff because she refused to transition to full-time employment and because she  
14 made protected disclosures of information she believed was evidence of a violation of law or a  
15 rule and a violation of professional standards of practice that posed a risk to the health, safety  
16 or welfare of a patient.

17 61.

18 Accordingly, Kaiser violated Section 49.1 of the CBA because it terminated Plaintiff  
19 without just cause and without use of progressive discipline in accordance with its established  
20 practices and policies.

21 62.

22 As a result of Kaiser's breach of the CBA, Plaintiff requests equitable relief in the  
23 form of reinstatement to the same or equivalent position she previously held and reinstatement  
24 of full benefits and seniority rights as if she had continued in employment. Plaintiff further  
25 requests economic and nonneconomic damages as described in paragraphs 33 through 35.

26 /////

**Page 12 - FIRST AMENDED COMPLAINT**

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ATTORNEYS AT LAW

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EXHIBIT 3  
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**FIFTH CAUSE OF ACTION - WRONGFUL TERMINATION**

**(Kaiser)**

63.

Plaintiff incorporates and re-alleges paragraphs 1 through 62 above.

64.

As explained above in more detail, Kaiser wrongfully terminated Plaintiff because she would not transition to full-time employment status and because she made protected disclosures of information she reasonably believed was evidence of a violation of federal, state or local law, rule or regulation; mismanagement that posed a substantial and specific danger to public health and safety; and violation of professional standards of practice that posed a risk to the health, safety or welfare of a patient.

65.

As a result of Kaiser's unlawful employment practices, Plaintiff requests equitable relief in the form of reinstatement to the same or equivalent position she previously held and reinstatement of full benefits and seniority rights as if she had continued in employment. Plaintiff further requests economic and nonneconomic damages as described in paragraphs 33 through 35.

**SIXTH CAUSE OF ACTION - BREACH OF DUTY OF FAIR REPRESENTATION**

**(SEIU)**

66.

Plaintiff incorporates and re-alleges paragraphs 1 through 65 above.

67.

As the collective bargaining agent for Plaintiff, SEIU had a duty to fairly represent Plaintiff's collective bargaining interest and to refrain from acting arbitrarily, discriminatorily, or in bad faith in protecting Plaintiff's interests.

////



1 68.

2 On or about October 17, 2020, Kaiser wrongfully terminated Plaintiff without just  
3 cause and without following its procedures regarding progressive discipline in violation of  
4 Section 49.1 of the CBA.

5 69.

6 As Plaintiff's collective bargaining representative, SEIU knew or should have known,  
7 through its agents and employees, that grievances involving an employee's discharge are  
8 routinely referred to arbitration especially where, as here, evidence is readily available which  
9 would cause the penalty imposed upon Plaintiff by Kaiser to be mitigated by an arbitrator.

10 70.

11 Although the CBA expressly provided a procedure by which Plaintiff's grievance  
12 could be referred to arbitration, and in spite of its knowledge that grievances involving an  
13 employee's discharge are routinely referred to arbitration, SEIU refused to submit Plaintiff's  
14 grievance to arbitration.

15 71.

16 SEIU's failure to adhere to the well established practice of referring grievances to  
17 arbitration, coupled with the fact that SEIU failed to perform any investigation or even request  
18 Plaintiff's personnel files, constitutes arbitrary, discriminatory, and bad faith conduct on the  
19 part of SEIU.

20 72.

21 There are no further remedies that Plaintiff can pursue under the grievance procedure  
22 provided by the CBA.

23 73.

24 As a direct and proximate result of SEIU's arbitrary, discriminatory and bad faith  
25 failure to refer her grievance to arbitration, Plaintiff has been wrongfully denied all  
26 opportunity to have permanent, gainful employment with Kaiser.

74.

Plaintiff requests economic and nonneconomic damages as described in paragraphs 33 through 35.

WHEREFORE, Plaintiff requests the following for her claims for relief:

1. Economic damages in an amount to be proven at trial, but which sum is alleged to be \$92,000, together with future economic damages;
2. Non-economic damages in an amount to be proven at trial, but which sum is alleged to be \$500,000;
3. Equitable relief in the form of reinstatement to the same or equivalent position she previously held and reinstatement of full benefits and seniority rights as if she had continued in employment;
4. Reasonable costs, expert witness and attorney fees pursuant to ORS 659A.885 and ORS 441.183 as designated above;
5. Costs and disbursements incurred in this matter; and
6. Any other relief this court deems just and equitable.

DATED this 6th day of December, 2021.

/s/ Amanda L. Reilly

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